

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

KIP EDWARDS, JADRIAN MITCHELL,
CURTIS HENDERSON, MICHELLE A.
BRAILEY, WINTHROP BROWN, CHASE
W. ERICSSON, WILLIE H. GARNER, IV,
CHRISTOPHER GREEN, TERENCE K.
GREENE, TRENTON J. HARRIS,
CORTNI D. HILL, NATHAN MARTINEZ,
LANDRESS POUNCY, KATHERINE J.
SHERROW, MARK SLIEPCEVIC,
KENDRICK C. WHITE, LACY E. VINSON,
and JEFFREY L. SPILLERS, on behalf of
themselves and all others similarly
situated.

Civil Action No. 3:11-cv-240

COLLECTIVE ACTION (JURY TRIAL)

Plaintiffs,

V.

KB HOME

Defendant.

SWORN DECLARATION OF JADRIAN MITCHELL

Pursuant to 28 U.S.C. §1746, I state under penalty of perjury that the following is true and correct:

1. My name is **Jadrian Mitchell**. I am of sound mind, over twenty-one (21) years of age and capable of making this declaration.
 2. I am a party plaintiff in the above-referenced action.
 3. I was employed by KB Home as a salesperson in the last three years.
 4. As a salesperson, I was responsible for selling homes built by KB Home. I worked from a model home sales office ("sales office" or "model home sales office") within a community under development. KB Home was the developer and owner of many of the residential communities and subdivisions in which its salespersons worked. As the developer, KB Home retains a continuing business interest in the community and maintenance of the community even after all of the lots and homes are sold.

5. In a typical week, I spent over 90% of my normal workday in the sales office.

6. As a salesperson at KB Home, my day-to-day business activities were conducted from a sales office, which served as a typical business office. The sales office contained a desk, telephone, computer, printer, internet access, file cabinets, various sales forms and other sales materials, an executive chair and chairs for customers to sit across from me at my desk. Like other KB Home salespersons, I reported to work at a sales office where my day-to-day business operations were conducted.

7. I rarely left the sales office to show prospective home buyers "spec" houses and vacant lots. In the limited instances in which I did so, I typically was gone no more than 20 minutes, and I generally travelled less than a 1 to 2 mile radius within the development where my sales office was located. On average, I would show prospective home buyers "spec" houses and vacant lots no more than 2 to 3 times per month. There were many weeks during which I never left the sales office to show a prospective home buyers "spec" houses and vacant lots. Often times, I would simply direct prospective buyers to tour the "spec" houses and lots on their own or with their realtor, rather than accompany them and leave the sales office understaffed or, in some cases, unattended.

8. As salespersons, we were discouraged from leaving the sales office. On those rare occasions that we did leave the sales office, we were required to return as quickly as possible, which was generally 20 minutes or less. Being absent from the sales office could result in discipline, including termination.

9. I also rarely visited local real estate agents and brokers to market KB Home's communities. On the very rare occasion that I might have visited a local real estate agent or broker to market a KB Home community, no customers or potential buyers were seen on those rare visits, and no sales were made during those visits. My marketing activities with real estate agents and brokers were conducted primarily by email and telephone from the sales office. I also participated in marketing events held at the sales offices by KB Home to which real estate agents and brokers were invited. Again, these events were held at the sales offices.

10. I also performed a great deal of paper work in the sales office each day. Almost all of the paperwork was directly related to the sales process, such as preparing sales documents, preparing emails for soliciting customers, preparing emails for marketing, preparing documents relating to sales quotas and the status of sales, preparing sales reports, preparing sales contracts, and preparing sales correspondence, among others. This paperwork typically required several hours each day.

11. I also spent several hours each day on the telephone in the sales office. These calls related to follow-up discussions with potential customers, soliciting new customers, performing “cold calls” during call-a-thons, following up on leads, and tracking the progress of homes under construction, among other things.

12. Once a home was under contract, I rarely visited the home site because KB Home’s construction managers handled the construction process and walk-thrus with the customers.

13. I was also responsible for “shopping the competition,” which involved familiarizing myself with the available homes and home prices of other competitor builders in the area. However, this duty did not require that I leave the sales office, as I was able to research the competition—i.e. the homes of other builders—through internet research and by telephone calls to salespersons for other builders.

14. All contracts for sale of new homes that I obtained were entered into in the sales office. Also, all of the mortgage sales that I made were done at the sales office. I did not make sales at customers home or businesses.

15. All of the critical or indispensable components of my overall sales activities took place within the model home sales office. A critical component of selling homes to KB Home’s buyers was to demonstrate the model home where the sales office was located. KB Home spends hundreds of thousands of dollars in developing these model homes, which also act as our sales offices. The visual inspection of the model home and the demonstration of the various upgrades that KB Home offered was the critical sales tool. We were trained and required to demonstrate the features of the model home to potential customers so that we could sell the customer on the “dream” of owning a beautiful home built by KB Home. The model home was an especially effective selling tool because it contained many upgrades and a professional décor with expensive furnishings and drapery. The demonstration of the model, of course, took place in the model home sales office.

16. I was also provided with a layout in the sales office that demonstrated the location of each available lot and home within the community, as well as the location of the other amenities in the community, such as the community pool. I used this layout with potential customers in the sales office to explain the location of any available home or lot within the community, as well as any amenities near the available home or lot.

17. I also provided floor plans of all available homes and lots and pricing lists to potential customers in the sales office where this material was kept.

18. I was also required to attend sales training programs offered by KB Home. These sales training programs were also held at the sales offices.

19. I was also required to spend a great deal of my time performing work that was not incidental to or in conjunction with my own sales or solicitations. For example, I spent time handling customer service matters and warranty complaints unrelated to my own sales or solicitations. I typically spent more than 5 hours per week performing additional work that was unrelated to my own sales or solicitations.

Executed on August 18th, 2011

By:



JADRIAN MITCHELL